

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
Charlotte Division  
Case No. 06-CV-461

ARBORETUM JOINT VENTURE, )  
LLC )  
Plaintiff, )  
v. )  
ECKERD CORPORATION )  
Defendant. )

**ORDER TO REMAND**

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This matter came before the Court by motion of the Defendant, and based upon said motion the Court makes the following findings of fact and conclusions of law:

1. Plaintiff originally filed the above-entitled action in the General Court of Justice District Court Division – Small Claims, Mecklenburg County, State of North Carolina, on October 23, 2006.
2. Plaintiff's complaint was for Summary Ejectment involving a commercial leasehold in Charlotte, Mecklenburg County, North Carolina.
3. Prior to the expiration of thirty (30) days from the filing and service of the complaint, Defendant file a Petition for Removal with this Court, seeking to remove the case on the basis of diversity of citizenship, and filed a Notice of Removal in state court.
4. In said petition Defendant alleged that the amount in controversy exceeded \$75,000.00, that Defendant was a Delaware Corporation with a principal place of business in Warwick, Rhode Island, and that the Plaintiff was a North Carolina Limited Liability Company with a principal place of business in Charlotte, North Carolina.

5. Since that time, Plaintiff has provided Defendant with satisfactory evidence that its sole member is AAC Retail Property Development and Acquisition Fund, LLC, a Delaware Limited Liability Company, whose members include two Delaware corporations, AAC Investments, Inc. and Angora Investments, Inc.
6. Unlike corporations, the citizenship of a limited liability company for diversity purposes is determined by the citizenship of its members, rather than its state of formation. *See, e.g. General Technology Applications, Inc. v. Exro Ltda*, 388 F.3d 114 (2004).
7. Because Defendant is incorporated in Delaware it is deemed a citizen of Delaware for diversity purposes. Because Plaintiff is a limited liability company, whose sole member is another limited liability company whose members include two Delaware corporations, Plaintiff would also be deemed a citizen of Delaware for diversity purposes, thus negating the total diversity of citizenship required for federal jurisdiction.
8. Plaintiff has consented to Defendant's motion to remand.
9. Remanding this action to state court is proper.

IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED that this matter be remanded from the United States District Court for the Western District of North Carolina, Charlotte Division to the District Court-Small Claims of Mecklenburg County, State of North Carolina, and that the parties shall bear their own costs and attorneys fees in connection with this motion.

This the 7th day of December 2006.

  
Federal District Court Judge, Presiding